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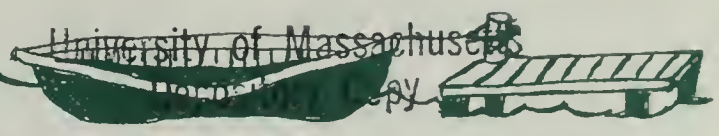
Wetlands Waterways



News about DEP's Wetlands and Waterways Programs

Mean Annual High-Water Regulation Changes Going into Effect

The Rivers Act regulations established the jurisdictional framework for defining a river and its accompanying riverfront area. Since they took effect, it has become evident that one aspect of these regulations - determining where the "Mean Annual High-Water (MAHW) line" and the lower Riverfront Area boundary begin - is difficult to apply in a consistent manner. To address this problem, DEP has proposed a regulatory revision based upon the concept of "bankfull conditions," which will provide greater certainty to conservation commissions, DEP, and the development community.

DEP is developing a guidance document to accompany the MAHW regulatory change. It will describe what is meant by bankfull discharge and bankfull field indicators, and will include case studies, stream survey methods, and definitions. This guidance document will be finalized in May and distributed over the summer through a series of workshops. The workshops will be sponsored jointly by DEP and the Association of Massachusetts Wetlands Scientists, and will include a field component so that participants can observe bankfull conditions first-hand.

The revised MAHW regulation and guidance provide that, in most rivers, the Mean Annual High-Water line will continue to be coincident with the first

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Clearwater Estates Kickoff

DEP is partnering with the BSC Group and the Massachusetts Association of Conservation Commissions to revise the Clearwater Estates guidance document and training modules. Clearwater Estates was originally designed in 1987 to help train conservation commissions in the administration of the Wetlands Protection Act. It provides step-by-step guidance through the permit application process for a fictional real estate development.

Since Clearwater Estates was last revised in 1993, many new regulatory and procedural changes have been enacted. These include the recent Riverfront Area provisions, stormwater management guidelines, and 401 Water Quality Certification revisions, among others. Building on the successful format of the original, the new Clearwater Estates will again follow a fictional development through the permit process. However, the updated version will incorporate many of the new regulatory developments and may also include coastal issues. The revised Clearwater Estates will also provide assistance to conservation commissions on procedural aspects of the regulations, including writing an effective Order of Conditions or Determination of Applicability, and issuing a Certificate of Compliance.

For more information on this project, contact Alex Gagnon at 617/ 556-1094.

Wetlands Update

MACC Conference

On March 4, 2000, the Massachusetts Association of Conservation Commissions (MACC) held its Annual Meeting in Worcester. More than 1,000 conservation commissioners, local officials, state and federal environmental regulators, consultants, attorneys, and students spent a busy day attending training sessions and visiting more than 40 exhibits and displays, including the DEP table. DEP staff were kept busy answering technical and administrative questions from attendees, as well as distributing program documents and fact sheets, such as the Draft Mean Annual High-Water regulatory revision and supporting material, and the Bordering Vegetated Wetlands video and field guide.

In her Millennium Message to conservation commissioners, DEP Commissioner Lauren A. Liss recognized the Circuit Rider Program for its role in implementing the Rivers Protection Act, one of the most important pieces of environmental legislation passed this decade. She highlighted recent circuit rider accomplishments. Circuit riders have contacted more than 75 percent of the state's local conservation commissions since inception of the program. In the last 18 months, the circuit riders have conducted approximately 170 workshops and training sessions across Massachusetts.

Survey to Update Commission Information

DEP's Circuit Rider Program is conducting a survey of conservation commissions in the agency's Northeast Region. The survey is intended to update DEP's administrative information on each commission, and to determine training needs on a town-by-town basis. Survey response has been very good to date and DEP encourages commissions to complete the survey.

Publication Update

The following documents are available upon request from the regional circuit riders and Wetlands Program in Boston, as well as from DEP's Web site at www.state.ma.us/dep/brp.

- Updated circuit rider biography sheet.
- Riverfront case studies booklet, including material used in DEP's riverfront workshops last fall (currently not available on Web site).

Wetlands Protection Act Forms

DEP is pleased to announce that its Wetlands Protection Act forms, with instructions and appendices, are now available on-line in Microsoft Word©. To download the forms in their new format, please visit DEP's Web site at www.state.ma.us/dep. Copies of the forms also were distributed to conservation commissions at the MACC Annual Meeting and were mailed to all other conservation commissions in March.

To request hard copies of the forms, contact Alex Gagnon at 617/ 556-1094.

Wetlands Protection Act Video and Guide

In March, DEP completed a mailing of the Bordering Vegetated Wetlands (BVW) Video and Field Data Form Guide to all conservation commissions. The 30-minute video is an informative, step-by-step guide on how to undertake the delineation of a bordering vegetated wetlands. The supplemental Field Data Form Guide allows viewers to follow the BVW Video and gives the steps for completing the Field Data Form successfully.

For More Information

For more information on any of the above topics, contact Alex Gagnon, Circuit Rider Coordinator, at 617/ 556-1094.

Compiled by Alex Gagnon

Mean Annual High-Water Regulations

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observable break in slope. However, in rivers generally characterized by a low-gradient slope and a broad, flat floodplain, "bankfull field indicators," rather than the first observable break in slope, represent the MAHW line.

Use of field indicators adheres to the statutory language which states that, "The MAHW line of a river is the line that is apparent from visible markings or changes in the character of soils or vegetation due to the prolonged presence of water and that distinguishes between predominantly aquatic and predominantly terrestrial land." Bankfull field indicators include changes in vegetation (usually changes in vegetation community), stain lines, top of point bars (depositional features), changes in slope, changes in bank material, and bank undercuts. These features will be described more fully in the guidance document.

DEP expects the MAHW regulatory change to become effective on May 12, 2000. Watch your conservation commission mailbox for a copy of the new regulation, the guidance document, and a brochure listing training opportunities.

For more information, contact DEP staff Heidi Davis at (978) 661-7781 or Tom Maguire at (617) 292-5602.

New MAHW Regulation

(2) (a) 2. Mean Annual High-Water Line of a river is the line that is apparent from visible markings or changes in the character of soils or vegetation due to the prolonged presence of water and that distinguishes between predominantly aquatic and predominantly terrestrial land. Field indicators of bankfull conditions shall be used to determine the mean annual high-water line. Bankfull field indicators include but are not limited to: changes in slope, changes in vegetation, stain lines, top of point bars, changes in bank materials, or bank undercuts.

a. In most rivers, the first observable break in slope is coincident with bankfull conditions and the mean annual high-water line.

b. In some river reaches, the mean annual high-water line is represented by bankfull field indicators that occur above the first observable break in slope, or if no observable break in slope exists, by other bankfull field indicators. These river reaches are characterized by at least two of the following features: low gradient, meanders, oxbows, histosols, a low-flow channel, or poorly-defined or nonexistent banks.

c. In tidal rivers, the mean annual high-water line is coincident with the mean high-water line determined under 310 CMR 10.23.

Drought Definition to be Revised

As of March 2000, precipitation and groundwater levels were lower than normal and similar to those observed at this time last year. This pattern is predicted to continue through spring and summer. In 1999, streams across Massachusetts experienced some of the lowest daily flows ever recorded, and yet did not meet the definition of drought contained in the wetland regulations. The current definition is based solely on precipitation, and does not adequately reflect groundwater levels in streams.

To develop a more accurate definition, DEP, the U.S. Geological Survey, the Massachusetts Department of Environmental Management Office of Water Resources, and an advisory committee composed of representatives from the building trades industry and environmental advocacy groups, are working together to have a new definition in place early this summer.

For more information on this issue, contact Tom Maguire at (617) 292-5602.

Wetlands Staff Notes

New Wetlands Program Chief

Michael Stroman has been promoted to the position of Wetlands Program Chief in Boston. Mike will be responsible for overseeing DEP regional coordination, the Circuit Rider Program, inter-agency coordination, and for setting general policy and regulatory positions on a wide range of wetlands issues.

Mike has been with the Wetlands Program since 1989. In his previous role coordinating variances, Mike handled many, if not all, of the most difficult and challenging wetland cases to arise in the last ten years.

A lawyer by training, Mike also has an undergraduate degree in Zoology and a Master's degree in Botany, specializing in coastal ecology. This combination of academic training and regulatory experience has served him well in negotiating complex multi-party cases with legal and technical issues. Mike can be reached at 617/ 292-5526.

Judith Perry Receives Hammer Award

On February 28, 2000, the Hammer Award was given to project managers from the U.S. Army Corps of Engineers, Massport, and the Great Lakes Dredging and Dock Company (GLD&D). This award was established by Vice-President Al Gore to recognize private and public partnerships that "reinvent" government.

The award was given for work that linked the mammoth Boston Harbor Navigation Improvement and Berth Dredging Project with the Cape Cod Canal Dredging Project. This action saved the federal government $1.5 million and eliminated the need for thousands of trucks going through the streets of Boston.

Judith Perry, DEP's 401 dredging reviewer, was "given the Hammer" for her work on the Boston Harbor Water Quality Certification permit. Perry's work with the Corps of Engineers, Massport, and GLD&D was lauded by Senator Kennedy, Rep. John Moakley, Assistant Army Secretary Joseph Westphal, and Massport Executive Director Virginia Buckingham.

Recharge Standard in the Stormwater Management Policy

DEP has been working with its Stormwater Technical Advisory Subcommittee to develop new guidance for the recharge standard (i.e. Standard 3 in the Stormwater Management Policy). The guidance will provide a step-by-step method to size infiltration basins, for consistency statewide.

Currently, the draft guidance is being reviewed within DEP to ensure adequacy. A companion document, providing a brief summary of the guidance, is being developed specifically for conservation commissions. DEP expects to issue the guidance later this year. No changes to Standard 3 are proposed.

For more information on this issue, contact Tom Maguire at (617) 292-5602.

Wetlands/Waterways is a publication of the Department of Environmental Protection, Bureau of Resource Protection, Outreach Services, One Winter St., Boston, MA 02108.

Spring 2000

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Executive Office of Environmental Affairs
Bob Durand, Secretary
Department of Environmental Protection
Lauren A. Liss, Commissioner
Edward Kunce, Deputy Commissioner of Operations
Bureau of Resource Protection
Arleen O'Donnell, Assistant Commissioner
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Wetlands Waterways

News about DEP's Wetlands and Waterways Programs

DEP adopts revised waterways regulations

Changes streamline the permitting process

DEP has revised the Chapter 91 waterways regulations (310 CMR 9.00) to streamline procedural requirements, while protecting public rights in tidelands and ensuring public participation in the review process. Applicants, DEP, and other state agencies will benefit from the changes. The revisions provide more review options, as well as procedural clarity and predictability for applicants. The changes will improve the efficiency of DEP's permitting procedures and promote more effective use of staff resources. The new provisions also increase coordination among state agencies. The revised regulations were adopted on April 28 and take effect July 1.

The new provisions offer a selection of application procedures designed to match the complexity of the project and the amount of information available at the time of submission. The revisions provide new license review options for nonwater-dependent use projects. These options reduce the current review timelines by 40-60 percent, depending on which option is chosen. The options include a combined Massachusetts Environmental Policy Act (MEPA)/Chapter 91 review process where an applicant can seek concurrent review under both regulatory agencies, resulting in the greatest reduction in application processing time. Applicants also can choose other licensing options: submission of a complete license application, which will significantly shorten the review process or submission of the minimum initial license information, resulting in a more limited reduction in review time.

The revisions provide new license review options for nonwater-dependent use projects. These options reduce the current review timelines by 40-60%, depending on which option is chosen.

In all cases, DEP has either shortened or combined the timelines at every step in its review process, including file number assignment, public notice issuance, public hearing scheduling, determination of file completeness, and the issuance of draft and final decisions. DEP also has incorporated a number of minor administrative measures that will lead to greater efficiencies in the licensing process.

Corresponding changes have been made in the fee regulations (310 CMR 4.00). Certain application fees have been increased to more accurately reflect the staff time and resources required for license review and approval.

The changes in the waterways regulations are based on the recommendations of the Chapter 91/Municipal Harbor Planning Work Group. Bob Durand, Secretary of the Executive Office of Environmental Affairs, established the Work Group in May 1999 to review both Chapter 91 and Coastal Zone Management's Municipal Harbor Planning processes. DEP thanks the following people and organizations for their participation with the Work Group: Al Frizelle, Boston Shipping Association; Stephanie Pollack, Esq., Conservation Law Foundation; Linda Haar,

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MAHW regulation takes effect

The revised definition for mean annual high water (MAHW) took effect on May 12. This regulatory revision (310 CMR 10.58(2)(a)(2)) clarifies the method for locating the MAHW line of a river. The MAHW line establishes the lower boundary of the Riverfront Area under the Rivers Protection Act amendments to the Wetlands Protection Act. The recently revised wetland regulations (310 CMR 10.00) can be found on DEP's Web site at www.state.ma.us/dep. DEP is in the process of mailing updated copies of the wetland regulations to each conservation commission office. Please contact Alex Gagnon at 617/556-1094 if your commission has not received its copy by the end of July.

Staff Update

DEP reluctantly bids farewell to **Gregory Carrafiello**. Greg has been with the Waterways Program for over 10 years, most recently serving as Program Chief. DEP has been fortunate to rely on Greg's experience and leadership during the Program's recent regulation revision and its ongoing permitting of the Central Artery Project. The Program wishes Greg well as he heads to the private sector.

DEP also regrets to announce the departure of **Judy Perry** in July. Judy is retiring after more than 17 years with the 401 Water Quality Certification Program. She joined DEP after serving as a biology teacher and completing a Northeastern University post-graduate program as part of a National Science Foundation Fellowship. Judy's background in chemistry and breadth of knowledge in dredging and water quality will be sorely missed. The Program wishes her the best in her future endeavors.

Rollo Tucker, a long-time member of the wetlands staff in DEP's Central Regional Office, is now handling waterways license applications for that region. For more information or pre-application assistance, contact Rollo at 508/792-7650 x3735.

Magda Pavlak has joined the Waterways Program as a regional planner in the Boston office. Magda is handling license research and is curator of the Program's historic maps and plans. She comes to the Program from the Commissioner's Office and has a background in environmental geology and marine science.

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Summer 2000

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Wetlands Publication Update

BVW Manual Available Online

DEP's manual, *Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands Protection Act* (March 1995), is now available online at DEP's Web site at www.state.ma.us/dep. The manual provides background information about wetland processes and regulations, procedures for delineating Bordering Vegetated Wetland boundaries, and recommendations for reviewing boundary delineations presented to conservation commissions.

Wetlands Protection Act Forms Available on Disk

Conservation commissions that do not have access to the Internet may obtain the Wetlands Protection Act instructions, forms, and appendixes on disk from DEP. The forms recently were converted to Microsoft Word 97 to allow commissions and applicants to complete and save the forms to their computers. To receive the disks, contact Alex Gagnon at 617/556-1094 or alex.gagnon@state.ma.us.

Waterways regulations

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Boston Redevelopment Authority; Ken Sinkiewicz, Mayor's Office, City of Boston; Patricia Foley, Save the Harbor/Save the Bay; Vivien Li, The Boston Harbor Association; R.J. Lyman, Esq., Goodwin Procter & Hoar, LLP; Matt Kiefer, Esq., Goulston & Storrs, PC; James Klocke, Boston Chamber of Commerce; David Begelfer, National Association of Industrial and Office Properties (NAIOP); Richard A. Nylen, Esq., Lynch, DeSimone, & Nylen; Joy Conway, Greater Boston Real Estate Board; Jamie Fay, Fort Point Associates; Michael Leone, MassPort; Senator Bruce Tarr; Matthew Thomas, Esq., City of New Bedford; Jack Wiggins, Urban Harbors Institute; and Jim English, The Raymond Property Company, LLC.

As a result of these regulatory changes, DEP is updating its waterways application forms. For more information on the revised regulations or application forms, contact Magda Pavlak, at 617/348-4048.